

## Stark...Mitigating the Battle Scars



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Hawaii 2016 HCCA Regional Conference

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## Objectives

- Who are the enemies and how do we make them allies?
- Identifying your mitigation weapons
- What systems can you create to maintain a protective shield?

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## Bottom Line



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### Bad Day



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### The Enemy

- OIG/DOJ
- Administration
- Management
- Staff
- Counsel
- Lack of process



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### WHY

- Adventist Health System to pay record-breaking \$118.7M to settle improper physician compensation claims  
Altamonte Springs, Fla.-based Adventist Health System agreed to pay \$118.7 million to the federal government and to the states of Florida, North Carolina, Tennessee and Texas to resolve allegations it violated the False Claims Act and Stark Law.



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### WHY

- Florida hospital district to pay \$69.5M to settle Stark Law, False Clams Act allegations  
North Broward Hospital District, a special taxing district of the state of Florida that operates hospitals and other healthcare facilities, agreed to pay the federal government \$69.5 million to settle allegations it violated the False Claims Act and Stark Law.



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### WHY



- Georgia health system inks \$35M deal to settle Stark Law, False Claims Act allegations  
Columbus (Ga.) Regional Healthcare System agreed to pay \$25 million, which will be divided between the federal government and the state of Georgia, to resolve allegations it violated the False Claims Act by submitting claims to government healthcare programs in violation of Stark Law.

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### WHY

- NY hospital to pay \$18.8M to settle kickback allegations  
Valhalla, N.Y.-based Westchester Medical Center agreed to pay the federal government \$18.8 million for its alleged violation of the Anti-Kickback Statute and Stark Law.



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### So, what does it mean



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### Top Excuses

- We've always done it this way.
- The physician already has a contract for X services, so I figured I could pay him for Y services based on that.
- I assumed the old contract was still OK.
- We had to get it done no matter what just to keep the physician happy or he would walk.
- Other hospitals don't make this physician sign a contract to provide these services.
- I can't tell Legal what to draft because I'm not sure why we're paying the physician.
- He is a physician who has saved lives for 20+ years here at \_\_\_\_\_, it is disrespectful to ask him to sign a piece of paper.
- It was just a simple deal.



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### Stark Overview

- Start with presumption that we CANNOT give or pay anything of economic value to a physician or her family member. If we do, we cannot bill Medicare for services ordered by the physician.
- Next: we might be able to rebut that presumption by fitting in a Stark exception.
- There is NO guarantee that one is available.
- Lack of bad intent is IRRELEVANT.

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### Types of Arrangements

- Physician Employment
- Medical Directorship
- Call Coverage
- Independent Contractor
- Recruitment
- Medical Staff Leadership
- Mid-Level Supervision
- Space Leases
- Professional Services Arrangements
- Co-Management Arrangements
- Income/Revenue Guarantees
- Uncompensated Care
- Management Services Arrangements (MSA)



- State/county payment subsidies to physicians through hospitals, etc.
- GME/Teaching Programs and Resident Supervision
- Research Relationships
- Technology: Meaningful Use/CPOE/EHR Champions
- Specialty Clinics (e.g., wound care, vein, outreach, etc.)
- Shared savings and bundled payments
- Risk-Sharing Arrangements
- Accountable Care Organizations
- Equipment Leases (physician owned)
- And more...!

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### Stark Reaches Most Family Members

- husband or wife
- birth or adoptive parent
- birth or adoptive child
- birth or adoptive sibling
- stepparent
- stepchild
- stepbrother / stepsister
- father/mother-in-law

- son/daughter-in-law
- brother/sister-in-law
- grandparent
- grandchild
- spouse of a grandparent
- spouse of a grandchild



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### Exceptions Frequently Used

- Medical Staff Incidental Benefits
- Non-monetary Compensation
- Personal services
- Office space/equipment rental
- Physician recruitment agreements
- Employment
- Medical Directorship



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## Stark Traps



- Stark reaches most all hospital/physician relationships
- Requires “perfect” compliance
- Consequences disproportionate to harm
- The more important the physician/group, the bigger the risk
- Watch out for physician-owned entities (equipment leases, device companies)
- Indirect compensation and the indirect compensation exception.
- Non-monetary Compensation

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## Stark Traps...Non-Monetary Compensation

- Non-monetary Compensation is defined as items or services, not including cash or cash equivalents, provided by the organization to a Physician (or an immediate family member) with a value of up to \$392 for calendar year 2016.

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## Stark Traps...Non-Monetary Compensation



- Social dinners
- Paying the greens or entry fees for golf, tennis or similar events
- Providing tickets for sporting, theatrical, concert, social or similar events
- Providing flowers or gifts for any reason during hospitalization or to recognize a birthday or other life event
- Any type of non-monetary gift not already listed:
  - Mugs
  - Note-pads
  - Pens
  - Wine
  - etc.

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### Tracking NMC

- Spread Sheet (Excel)
- Commercial Product
- Monthly Email
- Audit Expense Accounts
- Report to Compliance Committee

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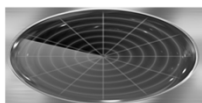
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### Mitigation Weapons



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### Keys to Mitigation

- Commitment of governance and senior management to compliance with physician transactions
- Structure and processes that create effective internal controls
  - Legal review of all physician contracts
  - Centralized physician contract approval process
  - A/P check prior to payment
- Regular auditing and monitoring and enhancement of existing physician transaction process



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### Keys to Mitigation

- Update agreements if services, space or compensation changes
- Regularly review MD contracts for Stark and AKS compliance
- Develop policies and procedures to timely report and refund identified over payments because of physician transaction issues

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### Compliance Review

- Initial Review VS. Continuous Review



- Attorney Client Privileged



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### Compliance Review

- Review Accounts Payable for payments to physicians
- Review Accounts Receivable for payments from physicians
- Review payroll for payments to physicians
- Comparison of payment with contract and supporting documentation
- Review contracts/leases to ensure they are up to date and payments are correct



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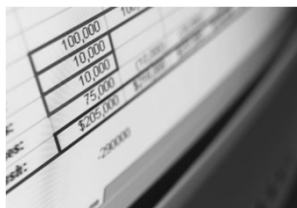
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## Compliance Review Tools

- Physician Transaction Spreadsheet
- Lease review Spreadsheet



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## Education

### Management

- Responsible for contracts
- Responsible for all check requests
- Must understand their contracts
- Gift givers
- Responsible for tracking against any caps



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## Operationalizing Stark Compliance

- Front to back end control
- No work without signed contract
- All signatures and dates
- 60, 90, 120 day reports
- Payment processing
- Supporting documentation



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### Operationalizing Stark Compliance

- Develop Specific Check Request Forms for Physician Payments
  - Accounts Payable
  - Time Sheet
  - Payroll
  - Call Schedules



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### OOPS!

- Investigation
  - Work with Counsel
  - Interview Knowledgeable Persons
  - Gather and Sequester Documents
  - Determine Payments Made Without Contract
  - Determine Overpayments from Medicare
  - REFUND 60 Days after IDENTIFIED
  - Disclosure (OIG or CMS)?????
  - Who, What, When, Why, How



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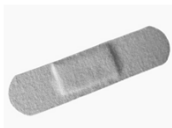
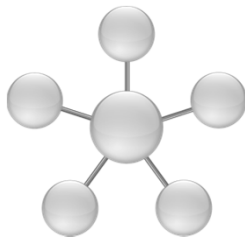
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Structure

Process

Policy



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# Questions



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